

(ii) In this *Example 6*, under the facts and circumstances, in which a principal purpose of the termination of employment was to alter the election and reinstatement of employment was understood at the time of termination, L does not have a change in status. However, L's termination of employment would constitute a change in status, permitting a cancellation of coverage during the period of unemployment, if L's original cafeteria plan election was reinstated upon resumption of employment (for example, because of a cafeteria plan provision requiring an employee who resumes employment within 30 days, without any other intervening event that would permit a change in election, to return to the election in effect prior to termination of employment).

Example 7. (i) Employer R maintains a calendar year cafeteria plan under which full-time employees may elect coverage under one of three benefit package options provided under an accident or health plan: an indemnity option or either of two HMO options for employees that work in the respective service areas of the two HMOs. Employee T, who works in the service area of HMO #1, elects the HMO #1 option. During the year, T is transferred to another work location which is outside the HMO #1 service area and inside the HMO #2 service area.

(ii) In this *Example 7*, the transfer is a change in status and, under the consistency rule, the cafeteria plan may permit T to make an election change to either the indemnity option or HMO #2, or to cancel accident or health coverage.

Example 8. (i) A calendar year cafeteria plan maintained by Employer S allows employees to elect coverage under an accident or health plan providing indemnity coverage and under a flexible spending arrangement (FSA). Prior to the beginning of the calendar year, Employee U elects employee-only indemnity coverage, and coverage under the FSA for up to \$600 of reimbursements for the year to be funded by salary reduction contributions of \$600 during the year. U's spouse, V, has employee-only coverage under an accident or health plan maintained by V's employer. During the year, V terminates employment and loses coverage under that plan. U now wants to elect family coverage under S's accident or health plan and increase U's FSA election.

(ii) In this *Example 8*, V's termination of employment is a change in status. The cafeteria plan may permit U to elect family coverage under S's accident or health plan, and to increase U's FSA coverage.

Example 9. (i) Employer T provides group-term life insurance coverage as described under section 79. Under T's plan, an employee may elect life insurance coverage in an amount up to the lesser of his or her salary or \$50,000. T also maintains a calendar year cafeteria plan under which qualified

benefits, including the group-term life insurance coverage, are funded through salary reduction. Before the beginning of the calendar year, Employee W elects \$10,000 of life insurance coverage, with W's spouse, X, as the beneficiary. During the year, a child is placed for adoption with W and X. W wants to increase W's election for life insurance coverage to \$50,000 (without changing the designation of X as the beneficiary).

(ii) In this *Example 9*, the placement of a child for adoption with W is a change in status. The increase in coverage is consistent with the change in status. Thus, W's cafeteria plan may permit W to increase W's life insurance coverage.

(1) *Effective date.* This section is applicable for plan years beginning after December 31, 1998, and on or before November 6, 2000.

[T.D. 8738, 62 FR 60166, Nov. 7, 1997; 63 FR 8528, Feb. 19, 1998; T.D. 8878, 65 FR 15553, Mar. 23, 2000]

§ 1.127-1 Amounts received under a qualified educational assistance program.

(a) *Exclusion from gross income.* The gross income of an employee does not include—

(1) Amounts paid to, or on behalf of the employee under a qualified educational assistance program described in § 1.127-2, or

(2) The value of education provided to the employee under such a program.

(b) *Disallowance of excluded amounts as credit or deduction.* Any amount excluded from the gross income of an employee under paragraph (a) of this section shall not be allowed as a credit or deduction to such employee under any other provision of this part.

(c) *Amounts received under a non-qualified program.* Any amount received under an educational assistance program that is not a "qualified program" described in § 1.127-2 will not be excluded from gross income under paragraph (a) of this section. All or part of the amounts received under such a nonqualified program may, however, be excluded under section 117 or deducted under section 162 or section 212 (as the case may be), if the requirements of such section are satisfied.

(d) *Definitions.* For rules relating to the meaning of the terms "employee" and "employer", see paragraph (h) of § 1.127-2.

(e) *Effective date.* This section is effective for taxable years of the employee beginning after December 31, 1978, and before January 1, 1984.

[T.D. 7898, 48 FR 31017, July 6, 1983]

§ 1.127-2 Qualified educational assistance program.

(a) *In general.* A qualified educational assistance program is a plan established and maintained by an employer under which the employer provides educational assistance to employees. To be a qualified program, the requirements described in paragraphs (b) through (g) of this section must be satisfied. It is not required that a program be funded or that the employer apply to the Internal Revenue Service for a determination that the plan is a qualified program. However, under § 601.201 (relating to rulings and determination letters), an employer may request that the Service determine whether a plan is a qualified program.

(b) *Separate written plan.* The program must be a separate written plan of the employer. This requirement means that the terms of the program must be set forth in a separate document or documents providing only educational assistance within the meaning of paragraph (c) of this section. The requirement for a separate plan does not, however, preclude an educational assistance program from being part of a more comprehensive employer plan that provides a choice of nontaxable benefits to employees.

(c) *Educational assistance—(1) In general.* The benefits provided under the program must consist solely of educational assistance. The term “educational assistance” means—

(i) The employer’s payment of expenses incurred by or on behalf of an employee for education, or

(ii) The employer’s provision of education to an employee.

(2) *Alternative benefits.* Benefits will not be considered to consist solely of educational assistance if the program, in form or in actual operation, provides employees with a choice between educational assistance and other remuneration includible in the employee’s gross income.

(3) *Certain benefits not considered educational assistance.* The term “edu-

cational assistance” does not include the employer’s payment for, or provision of—

(i) Tools or supplies (other than textbooks) that the employee may retain after completing a course of instruction,

(ii) Meals, lodging, or transportation, or

(iii) Education involving sports, games, or hobbies, unless such education involves the business of the employer or is required as part of a degree program. The phrase “sports, games, or hobbies” does not include education that instructs employees how to maintain and improve health so long as such education does not involve the use of athletic facilities or equipment and is not recreational in nature.

(4) *Education defined.* As used in section 127, § 1.127-1, and this section, the term “education” includes any form of instruction or training that improves or develops the capabilities of an individual. Education paid for or provided under a qualified program may be furnished directly by the employer, either alone or in conjunction with other employers, or through a third party such as an educational institution. Education is not limited to courses that are job related or part of a degree program.

(d) *Exclusive benefit.* The program may benefit only the employees of the employer, including, at the employer’s option, individuals who are employees within the meaning of paragraph (h)(1) of this section. A program that provides benefits to spouses or dependents of employees is not a qualified program within the meaning of this section.

(e) *Prohibited discrimination—(1) Eligibility for benefits.* The program must benefit the employer’s employees generally. Among those benefited may be employees who are officers, shareholders, self-employed or highly compensated. A program is not for the benefit of employees generally, however, if the program discriminates in favor of employees described in the preceding sentence (or in favor of their spouses and dependents who are themselves employees) in requirements relating to eligibility for benefits. Thus, although a program need not provide benefits for all employees, it must benefit those